No. 85-546

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1985

UNITED STATES OF AMERICA

v.

FLORENCE BLACKETTER MOTTAZ, ETC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

CHARLES FRIED
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

BEST AVAILABLE COPY

TABLE OF AUTHORITIES

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1. Respondent essentially concedes that the question of the application of the federal statutes of limitations to suits by Indians against the United States is of substantial practical importance. Thus, she expresses her agreement with the Department of the Interior that there is a problem of "significant magnitude" in the Northern Great Plains area with respect to potential claims based on sales of allotments that allegedly were made without the consent of all of the heirs. Br. in Opp. 2, quoting C.A. App. Exh. 2. Indeed, she asserts (Br. in Opp. 2) that in the Leech Lake area of Minnesota alone, there are several thousand interests in former allotments that would be affected by the holding below that the federal statutes of limitations do not apply to suits against the United States based on such transactions.

Moreover, as we have explained (Pet. 24), similar questions are presented in the more than 40 "Forced Fee" cases that already have been filed against the United States, and

those questions also are implicated in the thousands of other past transactions that were identified by the Department of the Interior in connection with Congress's extension of the statute of limitations in 28 U.S.C. 2415, which this Court discussed in *County of Oneida* v. *Oneida Indian Nation* (*Oneida II*), No. 83-1065 (Mar. 4, 1985), slip op. 15-16 n.15. Petitioner makes no effort to explain why an issue of such broad importance does not warrant review by this Court.

2. Respondent continues to express confusion regarding the nature of her suit. Although respondent insists (Br. in Opp. 3-4) that she has not abandoned her claim of title,[1] she insists at the same time (Br. in Opp. 7-12) that this is a suit for money damages. But even viewing this suit as solely one for money damages, respondent is wrong in contending that it is not barred by the statute of limitations.

Respondent first asserts (Br. in Opp. 7-9) that the district court has jurisdiction over this suit under the Tucker Act, 28 U.S.C. 1346(a)(2), by virtue of this Court's decisions in *United States* v. *Mitchell*, 445 U.S. 535 (1980) (*Mitchell I*), and *United States* v. *Mitchell*, 463 U.S. 206 (1983) (*Mitchell II*). We agree that the Tucker Act would furnish the basis of jurisdiction for a damage action such as this, but the exercise of that jurisdiction now is barred by the six-year statute of limitations in 28 U.S.C. 2401(a), which respondent concedes (Br. in Opp. 17) is applicable to Tucker Act suits brought in district court.

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[1]Because respondent continues to claim title to her former interests in the allotments, she errs in arguing (Br. in Opp. 16) that this suit is not barred by the 12-year statute of limitations in the Quiet Title Act (QTA), 28 U.S.C. 2409a(f). For the reasons stated in the petition (Pet. 11-12 & n.5), the QTA applies to a suit brought by an Indian to settle a disputed question of title to land held by the United States where, as here, the United States does not claim title to the land on behalf of Indians. By contrast, in *Spaeth* v. *Secretary of the Interior*, 757 F.2d 937 (8th Cir. 1985), upon which respondent relies (Br. in Opp. 16), the United States' claim of title was on behalf of Indians.

Respondent also contends (Br. in Opp. 8-10), however, that she can recover damages under 25 U.S.C. 345. Respondent is wrong. Respondent does not contend that the sale of the allotments in question violated 25 U.S.C. 345. She maintains that the sale violated 25 U.S.C. 483, because it allegedly was made without her consent. Thus, if any statute creates a substantive right to money damages in this case, it must be either 25 U.S.C. 483 or other statutory provisions that bar the sale of an allotment if not authorized by Congress. See, *e.g.*, 25 U.S.C. 348, 464. A suit seeking to recover damages from the United States under those provisions, like such a damage action arising under any other Act of Congress, can be brought in district court only under the Tucker Act.

That the Tucker Act is the exclusive basis for respondent's damages action is evident from the text of the Tucker Act itself, which grants the district courts jurisdiction over civil actions against the United States, not exceeding $10,000 in amount, that are "founded * * * upon * * * *any* Act of Congress" (28 U.S.C. 1346(a)(2) (emphasis added)). Moreover, in *Mitchell I* and *Mitchell II*, the plaintiffs sought to recover money damages based on violations of fiduciary duties imposed by various statutes governing the administration of allotments, and their suit was brought under the Tucker Act. Respondent similarly asserts (Br. in Opp. 10-12) that the Secretary's actions in this case violated fiduciary duties imposed by 25 U.S.C. 483 and other statutes. Respondent's efforts to recover money damages for these alleged violations therefore must also rest on the Tucker Act, subject to the six-year statute of limitations in 28 U.S.C. 2401(a).

3. Respondent contends (Br. in Opp. 13-14, 24), however, that the court of appeals correctly held that 28 U.S.C. 2401(a) does not apply to a claim based on a void transfer of Indian trust lands. The court of appeals acknowledged that, under 28 U.S.C. 2401(a), all civil actions against the United

States are barred unless filed within six years after the cause of action first "accrues." But the court read this Court's decision in *Ewert* v. *Bluejacket*, 259 U.S. 129 (1922), to stand for the proposition that "if the underlying sale of land is void, the concept that a cause of action 'accrues' at some point is inapplicable because the allottee simply retains title all along." Pet. App. 6a. This reading of *Ewert* is plainly wrong.

The Court held in *Ewert* that the Oklahoma statute of limitations did not bar a suit by an Indian to recover property that was conveyed to a person who was prohibited by federal law from purchasing it. 259 U.S. at 137. As this Court made clear in its opinion in *Oneida II* (slip op. 13 n.13), which was handed down after the court of appeals rendered its decision in this case, the holding in *Ewert* rests on the principle that under the Supremacy Clause, state-law time bars are entirely inapplicable to Indian land title claims against private parties. The Court's opinion in *Ewert* says nothing about when a cause of action would have accrued under the Oklahoma statute of limitations if it *did* apply. *Ewert* therefore lends no support whatever to respondent's contention (and the court of appeals' conclusion) that a cause of action *never* "accrues" for purposes of the six-year statute of limitations in 28 U.S.C. 2401(a) if the claim is based on an allegedly void transaction. Nor has respondent or the court of appeals cited any other support for that novel proposition, which would render meaningless in this context the six-year statute of limitations that Congress expressly applied to "every civil action" against the United States.[2]

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[2] *Oneida II* involved a transaction that was void because it did not receive the approval of the federal government. The Court held that the state statute of limitations did not apply by virtue of the Supremacy Clause and that the Tribe's damages action instead was subject to the statute of limitations in 28 U.S.C. 2415(a) and (b) and the Indian Claims Limitations Act of 1982, 28 U.S.C. 2415 note. Slip op. 12-16. The Court clearly did not intend that 28 U.S.C. 2415 nevertheless would be rendered inapplicable on the theory that the Oneidas' claim, which was based on a transaction that had occurred 190 years earlier, had not yet even "accrued."

Similarly, if this Court should hold in *South Carolina* v. *Catawba Indian Tribe of South Carolina*, No. 84-782, that Congress intended to make the South Carolina statute of limitations applicable to claims by the Catawba Tribe, then under the rationale urged by respondent and adopted by the court of appeals in this case, that statute of limitations presumably would be rendered nugatory with respect to the very transaction at issue in *Catawba* because the sale of the land to South Carolina in 1840 allegedly was void under the Trade and Intercourse Act and the Catawba Tribe's right of action therefore has not yet "accrued."

Respondent also advances this same rationale for avoiding the 12-year statute of limitations under the Quiet Title Act (QTA), 28 U.S.C. 2409a(f). See Br. in Opp. 15-16. However, the text of the QTA refutes respondent's submission. Under 28 U.S.C. 2409a(f), "[a]ny civil action" under the QTA is barred unless it is commenced within 12 years of the date upon which it "accrued." The QTA then specifies that an action "shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." This provision makes clear that a cause of action accrues when the plaintiff knows or should know of the United States' *claim* of title, irrespective of whether that claim is valid or is instead based on an underlying transaction that is void. There is no basis for giving a different interpretation to the term "accrues" in 28 U.S.C. 2401(a).

4. Respondent erroneously asserts (Br. in Opp. 14-16) that there is no conflict between the decision below and the decisions of other courts of appeals regarding the application of federal statutes of limitations to suits by Indians against the federal government.

a. As we have explained (Pet. 16-17), the Court of Claims and Federal Circuit consistently have held that the six-year statute of limitations in 28 U.S.C. 2501, which parallels 28 U.S.C. 2401(a), is fully applicable to suits by Indians against the United States, despite the existence of a fiduciary relationship under the statutes involved. Respondent attempts (Br. in Opp. 14-15) to distinguish the Federal Circuit's recent reaffirmation of that principle in *Menominee Tribe* v. *United States*, 726 F.2d 718, 721-722 (Fed. Cir. 1984), cert. denied, No. 83-1922 (Oct. 1, 1984), on the ground that the court there suggested that the statute of limitations might not apply in the case of an "express trust." 726 F.2d at 722. The court did not elaborate in *Menominee* upon the nature of any such narrow exception. But the Court of Claims previously had explained the scope of that exception in its decision in *Capoeman* v. *United States*, 440 F.2d 1002 (Ct. Cl. 1971), which the Federal Circuit reaffirmed in *Menominee*. The court suggested in *Capoeman* that the statute of limitations in 28 U.S.C. 2501 might be inapplicable to a suit by an Indian only if it involved a liquidated claim for money, if the money had been appropriated by Congress, and if the government did not contest the validity of the claim. 440 F.2d at 1003. See also *Christensen* v. *United States*, 583 F. Supp. 1539, 1540-1541 (D. Nev. 1984), aff'd, 755 F.2d 705, 706-707 (1985), petition for cert. pending, No. 85-372.[3]

The narrow exception just suggested plainly has no application here. Respondent has not brought this suit to recover a liquidated and appropriated sum of money that has been held continuously for her express benefit, and any

[3]In our memorandum responding to the certiorari petition in *Christensen*, we suggest that the petition be held and disposed of in light of the Court's disposition of the petition in this case. We are furnishing counsel for respondent with a copy of our response to the memorandum for the respondents in *Christensen*.

trust relationship that previously existed with respect to the former allotments involved in this case was terminated when they were sold in the 1950s. The far broader proposition respondent advances based on the mere existence of a fiduciary relationship — which would render federal statutes of limitations wholly inapplicable to suits by Indians — has been emphatically rejected by the Federal Circuit.

b. Respondent also contends (Br. in Opp. 16) that the decision below does not conflict with the Ninth Circuit decisions discussed in the certiorari petition (Pet. 23), in which suits by Indians under 25 U.S.C. 345 were held to be barred by 28 U.S.C. 2401(a). It is true that the Ninth Circuit in those cases did not specifically address respondent's novel argument that 28 U.S.C. 2401(a) does not apply to a claim based on an allegedly void conveyance of Indian land, since that precise set of facts was not involved in the Ninth Circuit cases. But the Ninth Circuit clearly *has* rejected respondent's underlying premise (Br. in Opp. 13-15, 19-21) that 28 U.S.C. 2401(a) has a unique application to suits by Indians. See *Christensen*, 755 F.2d at 706-707; *Big Spring* v. *United States Bureau of Indian Affairs*, 767 F.2d 614, 616-617 (9th Cir. 1985).

5. Respondent next argues (Br. in Opp. 16-19) that if this case arises under 25 U.S.C. 345, as she maintains, it is not barred by the statute of limitations because 28 U.S.C. 2401(a) applies only to suits under the Tucker Act. Respondent relies on the fact that prior to the 1948 revision of Title 28, a six-year statute of limitations was contained in 28 U.S.C. (1946 ed.) 41(20), which conferred Tucker Act jurisdiction on the district courts, but not in 28 U.S.C. (1946 ed.) 41(24), which conferred jurisdiction over suits involving the right of an Indian to an allotment. Respondent argues that for this reason, 28 U.S.C. 2401(a) should also be applied only to Tucker Act suits.

Respondent's contention is refuted by the plain language of the relevant statutory provisions. The former Section 41(20) of Title 28 (emphasis added) provided that "[n]o suit against the Government of the United States shall be allowed *under this paragraph* [*i.e.*, under the Tucker Act] unless the same shall have been brought within six years after the right accrued for which the claim is made". By contrast, 28 U.S.C. 2401(a) (emphasis added) — which appears in Chapter 161 of Title 28, entitled "United States as Party *Generally*" —provides that "*every* civil action commenced against the United States" (with one exception not relevant here) shall be barred unless commenced within six years of the date upon which it accrued. Congress thus clearly made the statute of limitations in 28 U.S.C. 2401(a) applicable not only to suits arising under the Tucker Act (to which the limitations period in 28 U.S.C. (1946 ed.) 41(20) was expressly confined), but to "every" civil action against the United States.

Respondent's argument for avoiding the application of 28 U.S.C. 2401(a) by reference to the pre-1948 version of the Tucker Act was not adopted by the court of appeals in this case, and it has not been accepted by any other court of appeals. Indeed, it has been rejected by the Ninth Circuit in the specific context of suits by Indians under 25 U.S.C. 345 (*Christensen*, 755 F.2d at 706), and, as we have pointed out in the petition (Pet. 21), the other courts of appeals that have considered the question have held that 28 U.S.C. 2401(a) applies to suits other than those for money damages under the Tucker Act. Accordingly, even if respondent were correct that jurisdiction over this suit rests on 25 U.S.C. 345 rather than the Tucker Act, it is barred by 28 U.S.C. 2401(a).

6. We have sufficiently answered respondent's remaining contention (Br. in Opp. 22-23) that this suit is governed by the statute of limitations in 28 U.S.C. 2415, rather than that

in 28 U.S.C. 2401(a) or the QTA. See Pet. 22-23. Section 2415 governs suits brought *by* the United States on behalf of Indians against non-federal parties (or brought by Indians themselves against such non-federal parties if the United States does not sue). It does not apply to suits against the United States. Suits by Indians against the United States in district court are subject to the explicit statutes of limitations in the QTA and 28 U.S.C. 2401(a) that apply, respectively, to "[a]ny" and "every" civil action against the United States.

For the foregoing reasons and the additional reasons stated in the petition for a writ of certiorari, it is respectfully submitted that the petition for a writ of certiorari should be granted.

CHARLES FRIED
Solicitor General

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